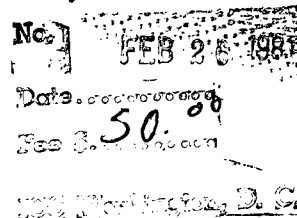


# The Northwestern Bank

John A. Tate, III  
Vice President - Corporate Banking

February 9, 1981



RECEIVED  
FEB 26 12 54 PM '81  
I.C.C.  
FEE OPERATION BR.

RECORDATION NO. 11522-A Filed 1426

Interstate Commerce Commission  
Interstate Commerce Building  
Washington, DC 20044

FEB 26 1981 - 1:00 PM

INTERSTATE COMMERCE COMMISSION

Gentlemen:

Re: Railcar Financing - O. Ted Kirby

The Northwestern Bank has agreed to finance one 100 ton covered hopper car (4,750 cubic feet capacity) with ICC road number PLMX 11764, originally delivered February 7, 1980. It is our understanding that to perfect a security interest in said car, serving as collateral, it is necessary to have our security agreement recorded with your office. Accordingly, please find enclosed said security agreement, in original form, for proper recording in your office. Please also note a copy of the management agreement (also assigned to our bank) by and between Mr. Kirby and the managing partner, PLM Railcar Management, Inc. You will note that this latter document has already been duly recorded with your office.

I would appreciate your properly recording our secured interest, notifying me of any fee due associated with same. Your cooperation is greatly appreciated, and I shall look forward to hearing from you in the near term.

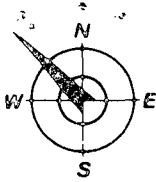
Sincerely,

John A. Tate, III

JAT/lsn

P.S. This was a "new" car upon delivery to Mr. Kirby on 2/7/80.

50<sup>00</sup> enclosed.



# The Northwestern Bank

John A. Tate, III  
Vice President - Corporate Banking

February 26, 1981

RECORDATION NO. 17522A Filed 1428

MAR 25 1981 - 10 25 AM

INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission  
Attention: Ms. Mildred Lee - Rm. 2303  
Twelfth and Constitution Avenue NW  
Washington, DC 20423

Dear Ms. Lee:

Re: O. Ted Kirby

As a followup to my letter of February 9th, and our phone conversation this morning, please find enclosed a duplicate (in notarized form) of the "original" presently held by you. Upon recording of the necessary document, please return the "original" to me, denoting in some form your appropriate registration. For your information, the address of Mr. Kirby is as follows:

O. Ted Kirby  
3642 Arbor Way  
Charlotte, NC 28211

I trust this satisfies your needs, and will look forward to receipt shortly of the registered document. Thank you for your help.

Sincerely,

John A. Tate, III

JAT/ltn

**Interstate Commerce Commission**  
**Washington, D.C. 20423**

**3/26/81**

**OFFICE OF THE SECRETARY**

**John A. Tate,111**  
**The Northwestern Bank**  
**P.O.Box 31277**  
**Charlotte,N.C.28231**

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act,49 U.S.C. 11303, on **2/26/81** at **11:00am**, and assigned recordation number(s). **11522-A**

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

# SECURITY AGREEMENT

January 2, 1980

TO SECURE PAYMENT of the Note(s) and/or Guarantee(s) executed by O. Ted Kirby, dated January 2, 1980, all obligations thereunder and any other obligations of the Undersigned to the Northwestern Bank (hereinafter called "Northwestern") howsoever created, arising or evidenced whether direct or indirect, absolute or contingent, now or hereafter existing, including future advances, due or to become due, (hereinafter collectively called "Obligations"), the Undersigned hereby mortgage, convey, and grant to Northwestern a security interest in the following described and identified property, any additions, accessions, and substitutions thereof and thereto and all proceeds thereof, including all cash, stock, or other dividends, insurance policies thereon, rights to subscribe to securities incident thereto and after acquired property other than consumer goods which are not accessions (hereinafter collectively called "Collateral"), whether or not such Collateral is deposited with or in the possession of Northwestern.

- (a) one 100-ton covered hopper (4750 cubic ft. capacity) railcar (RR Marking # PLMX 11764)
- (b) assignment of "Management Agreement" existing between O. Ted Kirby and PLM Railcar Management, Inc. (a California corporation), dated February 7, 1980.

RECORDATION NO. 11522-A Filed 1426

Feb 26 1981 11 00 AM

Any additional Collateral is listed on attached Schedule A, the contents of which are incorporated herein by reference.

INTERSTATE COMMERCE COMMISSION

(A) The Undersigned hereby warrants that (s)he:

☐ Owns the Collateral

☒ Will purchase and acquire rights in the Collateral within ten days of date advances are made under this Note.

(B) Primary Use of Collateral:

☒ Personal, family, or household (including personal investments)

☐ Farming operations

☐ Business use. Principal place of business: \_\_\_\_\_

Other places of business: \_\_\_\_\_

(C) Location of Collateral (including County): per "Management Agreement" existing between  
O. Ted Kirby and PLM Railcar Management, Inc.

(D) If the Collateral is or will be affixed to real estate, a description of the real estate is as follows: \_\_\_\_\_

The name of the record owner or lessee of the above described realty is: \_\_\_\_\_

(E) The Collateral is free and clear of all liens, security interests, and claims whatsoever, other than those granted to Northwestern, except the following: \_\_\_\_\_

THIS SECURITY AGREEMENT AND OBLIGATIONS SECURED HEREBY ARE SUBJECT TO THE ADDITIONAL PROVISIONS, WARRANTIES, UNDERTAKINGS, AND RIGHTS SET FORTH ON BOTH SIDES HEREOF, THE SAME BEING INCORPORATED BY REFERENCE HEREIN, and no waivers or modifications shall be valid without the express written consent of Northwestern.

In Witness Whereof, the Undersigned has caused this Security Agreement to be executed in its name by its duly authorized officers (if a corporation), or has hereunto set his hand and seal (if an individual) to be affixed hereto on the day and year first written above.

CORPORATE PLEDGOR:

Attest:

\_\_\_\_\_  
Name of Corporation

By \_\_\_\_\_

\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

By \_\_\_\_\_

INDIVIDUAL PLEDGOR(S)

✓ O Ted Kirby

(SEAL)

(SEAL)

(SEAL)

(SEAL)



Address \_\_\_\_\_

Etta O. Suman, Notary Public  
Charlotte, N.C.  
Mecklenburg County  
My Commission Expires 6-11-85

## THE UNDERSIGNED, INDIVIDUALLY AND COLLECTIVELY, HEREBY WARRANT, COVENANT, AND AGREE THAT:

1. The Undersigned has, or will forthwith acquire, full title to the Collateral and will at all times warrant, defend, and keep same free of all liens, security interests, attachments, and any claims whatsoever other than the security interests granted to Northwestern.
2. The Undersigned is liable for and will promptly pay all taxes and assessments upon the Collateral, its use or operation; all equipment, parts and accessories shall become part of the Collateral by accession; not to remove from the State, sell, or transfer the Collateral without the express written consent of Northwestern, or use same for hire or in any illegal manner; the Collateral shall be located at the place indicated herein and will be available at all times for Northwestern's inspection; the Collateral will be kept and maintained in a reasonably careful manner and in good order and repair, without exposing same to damage, wear, or depreciation; Time is of the Essence and any notices given to the Undersigned shall be sufficiently given if mailed to the address furnished Northwestern hereby certified to be correct, or to such substitute address as the Undersigned may from time to time furnish in writing to Northwestern. The Undersigned will promptly inform Northwestern of any material change in the value of the Collateral or the financial condition of any of the Undersigned, or any endorsers, guarantors, or sureties for said Borrower.
3. The Collateral shall at all times be at the Undersigned's risk. Any loss, injury or destruction thereof shall not release the Undersigned or any other persons from any payments, obligations, or performance due Northwestern under this Security Agreement or Obligations secured hereby. The Undersigned shall obtain and maintain continuously Physical Damage Insurance on the Collateral and any other insurance requested by Northwestern. All insurance shall be in form and amount satisfactory to Northwestern, name Northwestern as loss payee, and provide for a minimum ten day written cancellation notice to Northwestern. The Undersigned shall furnish to Northwestern the original policies of insurance or other satisfactory evidence of compliance with the foregoing insurance provisions. If the Undersigned fail or refuse to procure the necessary insurance within a reasonable time, Northwestern is authorized, but not obligated, to purchase any or all insurance as requested by Northwestern from time to time to secure its interest in form satisfactory to Northwestern. In such event, the Undersigned agrees to reimburse Northwestern for the cost of the insurance purchased, plus interest at the maximum contract rate then allowed by law.
4. The Undersigned hereby assign to Northwestern the proceeds of all such insurance to the extent of any obligations owed Northwestern, and directs the insurer to make payments directly to Northwestern. The Undersigned hereby grants to Northwestern a Power of Attorney, irrevocable as long as any amounts secured hereby are unpaid. Said Power of Attorney gives Northwestern the sole right to file proof of loss or any other forms required to collect from the insurer the amounts due from loss, damage, or destruction to the Collateral or for any other reason to agree to and bind the Undersigned as to the amounts of the recovery; to grant releases or subrogation rights to insurers; to endorse settlement checks or drafts; and to deal with any other matters incidental to insurance rights or liabilities. The Undersigned agree not to exercise any of the foregoing powers granted to Northwestern without the latter's written consent. In the event of default by the Undersigned or any other persons under this Security Agreement or Obligations secured hereby, Northwestern is authorized to cancel the insurance and credit any premium refunds against the unpaid balance of any Obligations secured hereby.
5. The Undersigned hereby authorizes Northwestern to execute and file any and more Financing Statements or other documents as requested by Northwestern from time to time to secure its interest in form satisfactory to Northwestern, and will pay all costs and expenses of preparing and filing the same, whenever execution and filing are requested by Northwestern. Northwestern is hereby authorized to file Financing Statements or other documents perfecting its interest in the Collateral, without the signature of the Undersigned, whenever authorized by law, and is authorized to amend, continue, or correct errors in this Security Agreement, Obligations secured hereby, Financing Statements, or any other documents executed by the Undersigned.
6. The Undersigned, sureties, endorsers, guarantors, or any other persons who are or may become liable under this Security Agreement or Obligations secured hereby, do jointly and severally, waive all exemptions, reserved rights, presentment, demand, protest, notice of protest, dishonor, acceleration of maturity upon default, or otherwise. Northwestern is hereby authorized to extend or renew this Security Agreement and any Obligations secured hereby for any period of time, howsoever long, and grant any releases, modifications, compromises, or indulgences with respect to this Security Agreement or Obligations secured hereby to any party liable on either, all without notice to or consent of the Undersigned or any other persons and without affecting liability of the Undersigned. The Undersigned hereby waive notice of acceptance of this Security Agreement, Obligations secured hereby, or any guarantees, and expressly agree to fulfill all responsibilities thereunder without requiring any action or proceeding against any other persons. If more than one person executed this Security Agreement or Obligations secured hereby, each person hereby constitutes and appoints each other as his agent for purposes of dealing with Northwestern concerning same.
7. The maximum benefits payable under any or all group credit life insurance procured through Northwestern by one individual is \$10,000.00; that the maximum benefits payable under any or all disability insurance procured through Northwestern is \$10,000.00 with the further restriction that no monthly benefit may exceed \$250.00; that the Undersigned has not and will not procure any insurance through Northwestern in excess of these benefit limits, nor will attempt to enforce any policies already issued in excess of these benefit limits.

## ADDITIONAL RIGHTS OF PARTIES

1. Northwestern shall have no custodial or ministerial duties to perform with regard to Collateral pledged and delivered into the possession of Northwestern, except for its safekeeping, and no liability shall accrue for any of the following events: loss or depreciation of the Collateral, failure to present any paper for payment or protest or to protest or give notice of non-payment, or any notices whatsoever with respect to any paper or the Collateral; failure to present or surrender for redemption, conversion, or exchange any bond, preferred stock, paper, or other security whether in connection with any merger, consolidation, recapitalization, reorganization, or arising out of the refunding of the original security, or failure to notify the Undersigned that the Collateral should be so presented or surrendered.
2. Northwestern may discharge taxes, liens, security interests or other encumbrances placed on the Collateral at the expense of the Undersigned who hereby agree to reimburse Northwestern for all expenses incurred thereby plus interest at the maximum contract rate then allowed by law. Until default, the Undersigned shall have the right to retain possession and use of the Collateral, unless specifically pledged and delivered into the possession of Northwestern.
3. If Northwestern deems the Collateral unsatisfactory as security at anytime, because of a decrease in the value of the Collateral represented by the price readily available to Northwestern at an immediate sale, or in the event Northwestern should otherwise deem itself, its security interest, its Collateral, or the Obligations secured hereby, unsafe or insecure, then and on demand of Northwestern, the Undersigned shall immediately make such payment on the Obligation or furnish such further Collateral as will be satisfactory to Northwestern, to be held by Northwestern as if originally secured hereby.
4. If with respect to any security pledged hereby, a stock dividend is declared, split-up made or right to subscribe is issued, the Undersigned will immediately deliver and duly endorse to Northwestern all the certificates for the shares representing such stock dividend, split-up, or right to subscribe as additional Collateral.
5. If the Collateral listed above has been or is to be affixed to real estate belonging to the Undersigned, the Undersigned hereby covenant and agree that upon the happening of any of the Events of Default, (s)he will execute and deliver to Northwestern, upon demand, a good and sufficient Deed of Trust conveying said real estate as additional Collateral securing the payment of all Obligations secured hereby. The Undersigned reserves the option to pay Northwestern the entire unpaid balance due on the Obligations secured hereby, in lieu of furnishing the aforementioned Deed of Trust upon the happening of an Event of Default. If the Collateral is affixed to real estate owned by one other than the Undersigned, the Undersigned shall deliver to Northwestern written disclaimers of interest in the Collateral executed by all persons having an interest in the real estate prior to the delivery of any value by Northwestern.
6. Northwestern may without notice transfer or register the Collateral in the name of its nominee at any time, and in addition exercise rights of collection, conversion or exchange and other similar rights, privileges or options; sell or realize upon the Collateral as herein authorized or needed to preserve or protect its position hereunder and shall not be responsible for any failure or delay to do so. As to any Collateral consisting of Chattel Paper, it is agreed that Northwestern shall not be required to take any steps whatsoever to preserve rights against prior parties, pursuant to N.C.G.S. 25-9-207(1).
7. Upon any conveyance of this Security Agreement or Obligations secured hereby, Northwestern may deliver the Collateral held as security to the transferee, who shall thereupon become vested with all the powers and rights herein granted to Northwestern regarding the Collateral so transferred and delivered, forever relieving and fully discharging Northwestern from any liability or responsibility thereon. For the Collateral not transferred, Northwestern shall retain all rights and powers herein given.
8. Other Collateral may be substituted for the original Collateral listed herein, in the sole discretion of Northwestern upon such terms and conditions deemed advisable, in which event all rights, duties, obligations, remedies, and security interests created herein shall apply to the substitute Collateral as if originally secured hereby.
9. Northwestern's acceptance of any payment on the Obligations secured hereby after it has demanded payment of the entire unpaid balance due, or after suit has been instituted to collect same, or any other act of Northwestern whatsoever shall not constitute a waiver of any right, defense, or Event of Default otherwise in existence. No waiver by Northwestern of any Event of Default shall operate as a waiver of any other default now in existence or occurring in the future under same or differing conditions.
10. Borrower acknowledges Northwestern's right of set-off or banker's lien as to any monies deposited in demand, checking, time, savings, or other accounts of any nature maintained in and with Northwestern by any of the Borrowers, without advance notice. Said right or set-off shall also be applicable where Northwestern is indebted to any Borrower hereunder by reason of any certificate of deposit, bond, note, or otherwise.

## EVENTS OF DEFAULT

The Undersigned shall be in default under this Agreement, upon the happening of any of the following events, circumstances or conditions, namely:

1. Default in the payment or performance of any of the Obligations secured hereby or of any covenant, warranty or liability expressed herein or therein, or in any other Obligations owed to Northwestern by the Undersigned, or any of them; or
2. Any warranty, representation, or statement made or furnished to Northwestern, by or on behalf of the Undersigned, in connection with this Security Agreement, any Obligations secured hereby, or other Obligations which are false in any material respect when made or furnished; or
3. Loss, theft, substantial damage, destruction, sale or encumbrance to or of any Collateral, or the assertion or making of any claim, levy, seizure, mechanic's or materialman's lien or attachment thereof or thereon; or
4. Death, dissolution, termination of existence, insolvency, business failure, appointment of a receiver of any part of the property of Assignment for the Benefit of Creditors by, or the commencement of any proceeding under the Bankruptcy or Insolvency Laws or any state or federal rules or regulations promulgated thereunder, or against the Undersigned or any endorser, guarantor or surety for said Borrower; or
5. Failure of the Undersigned, endorsers, guarantors, or sureties to maintain their corporate existence in good standing; or
6. The Undersigned being found to have either a record or reputation for violating Laws of the United States or of any State relating to liquor (as referred to in 18 USC 3617, et seq), narcotics, or any Commercial Crimes; or
7. Upon the entry of any judgment, assessment, filing of any tax lien against the Undersigned, or upon the issuance of any writ of garnishment or attachment against any property of, debts due, or rights of the Undersigned, specifically including court judgment of any action or proceeding to seize monies of the Undersigned on deposit in any bank account with Northwestern; or
8. If Northwestern should otherwise deem itself, its security interest, its Collateral, or said debt unsafe or insecure, or should said Northwestern, in good faith, believe that the prospect of payment or other performance is impaired.

## REMEDIES ON DEFAULT

Upon the occurrence of any of the foregoing events, circumstances or conditions of Default, all of the Obligations evidenced herein and/or secured hereby shall immediately be due and payable, without notice. Further, without limitation, Northwestern shall have the following specific rights and remedies of a Secured Party under the Uniform Commercial Code, as enacted in North Carolina:

1. To take immediate possession of the Collateral without notice or resort to legal process, and for such purpose, to enter upon any premises on which the Collateral or any part thereof may be situated and remove same therefrom; or at its option, to render the Collateral unusable. Further, in the event the repossessed Collateral contains property or the repossession incidentally results in Northwestern's possession of property not subject to its security interest, Northwestern may temporarily hold, for the Undersigned, any personal property located therein or thereon and not subject to Northwestern's security interest. In such event the Undersigned shall be notified by certified or registered US Mail, notify Northwestern within twenty-four hours after its resumption of possession or repossession of the Collateral, as to any such claims claimed by the Undersigned not to be subject to Northwestern's security interest. After five days from date of Secured Party's possession, any items not subject to Secured Party's security interest shall be held at the Undersigned's sole risk and expense.
2. To require the Undersigned to assemble the Collateral and make it available to Northwestern at a place and time to then reasonably be designated by Northwestern.
3. At its sole option, to the extent allowed by law, to retain the Collateral in satisfaction of any or all Obligations evidenced herein and/or secured hereby. If Northwestern should elect such option, written notice thereof shall be mailed to the Undersigned by certified registered mail, prior to the date such election is to be effective. Unless such written notice is sent by Northwestern, retention of said Collateral shall not be in satisfaction of any Obligations secured hereby, but instead shall be for the purpose of foreclosing thereon its lien, or security interest, as herein provided.
4. To dispose of said Collateral, in any County or place to be selected by Northwestern after Default, at either Private or Public Sale at which Sale Northwestern may as provided by law, be the purchaser, with or without having the Collateral physically present at said Sale. If said Collateral is sold at Public Sale under this Contractual Power of Sale, it is agreed that, pursuant to N.C.G.S. 25-9-603, or any similar statutes subsequently enacted in replacement therefor, notice of such Public Sale shall be posted on a suitable Bulletin Board maintained for such purpose in the Court House in the County or place in which said sale is to be held, at least 5 days immediately preceding the Sale. Such posting shall constitute sufficient advertising. If said Collateral is to be sold at Public Sale, Northwestern shall mail a copy of its Notice of Public Sale to Borrower at the address shown thereon, at least 5 days before the date of such Public Sale. Further, if said Collateral is to be sold at Private Sale, Northwestern shall give at least 5 days written notice of the time when Private Sale is to be made, such notice being stipulated by all parties hereto as reasonable. At any sale or other disposition of the Collateral, Northwestern may accept a trade of property for all or a portion of the sale price. Provided, nonetheless, the 5 days provided herein may be reduced or eliminated consistent with N.C.G.S. 25-9-504, or any similar statutes subsequently enacted in replacement therefor.
5. To make or have made any repairs found necessary or desirable at time of repossession, possession, or sale, the cost of which is to be charged against the Undersigned.
6. In Northwestern's sole discretion to apply the proceeds realized from disposition of the Collateral to satisfy the following items: the cost of reimbursing any person whose interest in the premises is physically damaged by the entry and removal of the Collateral, upon the Undersigned's failure to do so; the expenses of taking, removing, holding for sale, repairing or otherwise preparing for sale and selling said Collateral, specifically including Northwestern's reasonable Attorney's fees and both legal and collection expenses, if Claim and Delivery or Suit are instituted for possession of said Collateral or collection of any unpaid balance secured hereby; The Undersigned herewith stipulates and agrees that 15% of the sum of the unpaid principal and all interest due thereon at the time suit is instituted by Northwestern shall be deemed reasonable Attorney's fees; the expense of liquidating any liens, security interests, attachments or encumbrances superior to the security interest herein created; and all accumulated interest and the unpaid principal balances secured hereby and any other Obligations owed to Northwestern by the Undersigned.
7. Any surplus after the satisfaction of the foregoing items shall be paid to the person lawfully entitled thereto which shall be conclusively presumed to be the principal debtor, unless Northwestern is notified otherwise in writing. Further, if the proceeds realized from disposition of the Collateral shall fail to satisfy any of the foregoing items, such deficiency balance shall be paid forthwith to Northwestern by the parties obligated therefor.

THIS SECURITY AGREEMENT AND OBLIGATIONS SECURED HEREBY shall be governed by and construed under North Carolina Law. All terms and expressions contained herein which are defined in Articles 1, 3, or 9 of the Uniform Commercial Code of North Carolina shall have the same meaning herein as in said Articles of said Code. All rights of Northwestern hereunder shall inure to the benefit of its successors and assigns; and all obligations of the Undersigned shall bind their heirs, executors, administrators, successors, or assigns. If more than one person has signed this Security Agreement, such parties are jointly and severally obligated hereunder. Further, use of any pronoun herein shall include the feminine and neuter, and also the plural. If any provision of this Security Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective but only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Security Agreement.

NOTICE: SEE OTHER SIDE FOR IMPORTANT INFORMATION